



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221116-0244]

RIN 0648-BI18

Fisheries of the Northeastern United States; Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Final rule.

SUMMARY: This final rule announces approval of, and implements management measures contained in, Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. The Mid-Atlantic Fishery Management Council developed these measures to limit the amount of surfclam or ocean quahog individual transferable quota share or annual allocation in the form of cage tags that an individual or their family members are permitted to hold. These changes are intended to ensure the management plan is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act, and to improve the management of these fisheries.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Copies of Amendment 20, including the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) are available on request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to (enter office name) and to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review - Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

This final rule concurrently notifies the public of the approval of Amendment 20, also known as the Excessive Shares Amendment, to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) on behalf of the Secretary of Commerce, and implements the management measures contained in the Amendment. The Mid-Atlantic Fishery Management Council developed this amendment to establish limits to the amount of individual transferable quota (ITQ) share or cage tags such that any particular individual, corporation, or other entity cannot acquire an excessive share of such privileges, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP. We published a notice of availability on August 10, 2022 (87 FR 48617), announcing a 60-day period for the public to review and provide written comments on whether we, acting on behalf of the Secretary of Commerce, should approve Amendment 20. This comment period ended on October 11, 2022. On August 24, 2022, we published a proposed rule (87 FR 51955) to implement the amendment and solicit written comments on the proposed rule for a 30-day period, which ended on September 23, 2022.

We reviewed all comments received during these comment periods, whether directed at our approval decision or the proposed regulations. See Comments and Responses section for more information. Now, on behalf of the Secretary of Commerce, we are announcing the approval of Amendment 20, and issuing this final rule implementing Amendment 20, consistent with the review and approval process outlined in section 304(a) of the Magnuson-Stevens Act. The full development history of this action was provided in the proposed rule and is not repeated here.

Excessive Share Caps

This action establishes separate caps for quota share and for annual cage tags for both the surfclam and ocean quahog ITQ programs. The amount of quota share that an individual or entity is permitted to have ownership in will be capped at 35 percent of the surfclam quota and 40 percent of the ocean quahog quota. Higher caps are established for cage tags in recognition that additional temporary consolidation through leasing or other transactions may be warranted within a fishing year to meet market demand because of the limited number of processors available. There is a limited market for fresh surfclams or ocean quahogs. The fisheries largely rely on a small number of processing plants to convert these species into final products or ingredients for other food companies. These plants operate by leasing cage tags from multiple quota shareholders and then providing those tags to harvesting vessels that deliver clams, as needed by the plants. The amount of annual cage tags that an individual or entity is permitted to have in a given year will be capped at 65 percent for surfclam and 70 percent for ocean quahog.

No person or entity currently exceeds the quota share cap implemented in this final rule, nor has any entity exceeded the cap on annual cage tags in recent years. The Council selected these cap limits to ensure that potential future consolidation does not reach the level of an excessive share of this fishery, and were not intended to restrict current quota share holdings. The proposed rule included a detailed description of how

these caps would be monitored and enforced, including examples, and that information is not repeated here.

As part of this amendment, the Council must conduct a review of these ITQ ownership cap measures at least every 10 years, or sooner as needed. This review should include an evaluation of the effects and effectiveness of the caps in the fishery and whether the cap levels remain appropriate or should be adjusted.

Multi-year Specifications

This action sets the maximum duration of multi-year specifications to the number of years needed to align with the stock assessment schedule approved by the Northeast Region Coordinating Council (NRCC). The NRCC is composed of representatives from the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, the Atlantic States Marine Fisheries Commission, the NMFS Greater Atlantic Regional Fisheries Office, and the Northeast Fishery Science Center. One of its roles is to develop a schedule for fishery stock assessments that balances the needs of the numerous fisheries in the region with the available resources. The current schedule calls for an updated stock assessment every 4 years for surfclam and every 6 years for ocean quahog. These assessment intervals are the result of recent improvements to the methods used to survey these wild populations. Allowing specifications to be set for the full duration between assessments will allow the Council, Council staff, and NMFS staff to avoid spending time developing new specifications packages when no new information on the health of the stocks is available. The Council and its Scientific and Statistical Committee will continue the current practice of reviewing the specifications each year, and making mid-cycle adjustments if conditions and available information warrant changes.

Comments and Responses

A total of three comments were received on the proposed rule and notice of availability. All three comments were submitted by representatives of the surfclam fishing industry and supported all of the new measures as proposed.

Changes from the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with Amendment 20, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information 0648-0240 by removing the section of the ITQ Ownership form that requires identification of corporate officers and removing some of the “additional transaction details” questions from the ITQ transfer form. This information will not be used to define or monitor the excessive share caps and collecting the information is no longer necessary. Removing these questions is not anticipated to change the number of respondents or responses and will not have a

measurable reduction in burden hours or costs. An extension of the collection is also requested through this action. Public reporting burden for the ITQ ownership form is estimated to be 1 hour to complete for new entrants and 5 minutes to review a pre-filled form for renewing entities. The ITQ transfer form is estimated to take 5 minutes to complete. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: www.reginfo.gov/public/do/PRAMain. You can find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0240.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, add paragraph (j)(3)(viii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) * * *

(3) * * *

(viii) Take action to circumvent an ITQ quota share cap or cage tag cap specified in 648.74(a)(2) or fail to take corrective action if such cap is exceeded inadvertently.

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3. In § 648.72 paragraphs (a) introductory text, paragraph (a)(1) introductory text, and paragraph (b) to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified by the Regional Administrator for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment

report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

* * * * *

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a multi-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current multi-year period. Such modification shall be in effect for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a multi-year period.

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4. In § 648.74, add paragraph (a)(2) and revise paragraph (b)(3) to read as follows:

§648.74 Individual Transferable Quota (ITQ) Program.

(a) * * *

(2) *ITQ ownership caps.* (i) *Quota share.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional quota share, if, as a result of the issuance of the permit or quota share transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 35 percent of the total surfclam quota or 40 percent of the total ocean quahog quota.

(ii) *Cage tags.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional cage tags, if, as a result of the issuance of the permit or cage tag transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 65 percent of the total surfclam cage tags issued that year or 70 percent of the total ocean quahog cage tags issued that year.

(iii) *Enforcement.* The following conditions apply for the purposes of monitoring and enforcing these caps.

(A) Any partial or shared ownership is counted as full ownership by each party for the purpose of monitoring these caps. For example, if two people share ownership of a business with quota share, the full amount of quota share held by the business counts toward the cap for both owners.

(B) Having an ownership interest includes, but is not limited to, persons who are shareholders in a corporation that holds an ITQ permit, who are partners (general or limited) to an ITQ permit holder, who are immediate family members of an ITQ permit holder, or who, in any way, partly own an entity that holds an ITQ permit.

(C) Immediate family members include individuals connected by the following relationships:

(1) Spouse, and parents thereof;

- (2) Children, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Siblings, and spouses thereof; and
- (5) Grandparents and grandchildren, and spouses thereof.

(D) The quota share and cage tag caps do not apply to a bank or other lender that holds ITQ quota share as collateral on a loan as described in paragraph (a)(1)(i)(C) of this section. The quota share held as collateral and the associated cage tags will be treated as if it is held by the borrower.

(E) Compliance with these ownership caps is based on the total amount of quota share or cage tags controlled throughout a fishing year. In this instance, control means the cumulative total amount of quota share or cage tags, including the amount held by the ITQ permit at the start of the fishing year plus any quota share or cage tags acquired by the ITQ permit throughout the fishing year. This measure of control during the fishing year is increased by acquiring quota share or cage tags from other ITQ permits, but is not reduced by any quota share or cage tags that are transferred to another ITQ permit.

(iv) *Review.* The MAFMC shall review these ITQ ownership cap measures at least every 10 years, or sooner as needed. Such a review should include an evaluation of the effects and effectiveness of the caps in the fishery and whether the cap levels remain appropriate or should be adjusted.

(b) * * *

(3) *Denial of ITQ transfer application.* The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transfer is not allowed under paragraph (a)(1)(ii)(C)(3) of this section; the transferor's or transferee's surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an

enforcement proceeding under 15 CFR part 904; the transfer would result in exceeding an ownership cap under paragraph (a)(2) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

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